

Approved, SCAO

Original - Court
1st copy - Prosecutor2nd copy - Defendant
3rd copy - Defendant attorney

STATE OF MICHIGAN JUDICIAL CIRCUIT COUNTY	MOTION FOR RELIEF FROM JUDGMENT	<div style="border: 1px solid black; padding: 5px; text-align: center;"> CASE NO. 1111911-FH 1111910-FH </div>
ORI MI-	Court address	Court telephone no.

THE PEOPLE OF THE STATE OF MICHIGAN

v

Defendant name, address, and inmate no.
Kelvin wayne Heath

To be completed by the court.

CTN/TCN	SID	DOB
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INSTRUCTIONS: Answer each question as completely as you can. If you need more space to answer any question, you may attach extra pages. You may also attach documents, affidavits, or a brief, if you wish. Only one motion for relief may be filed, except as indicated in MCR 6.502(G)(2). Information for items 1 and 2 is on both your judgment of sentence and basic information sheet, which are available at the prison record office.

1. I was found guilty on 3-29-12 of the crime(s) stated below.

Count	CONVICTED BY			DISMISSED BY*	CRIME	CHARGE CODE(S) MCL citation/PACC Code
	Plea*	Court	Jury			
			✓		unarmed Robbery	750.530
			✓		unarmed Robbery	750.530
			✓		Impersonation of a Public officer	750.215
			✓		Habitual offender	769.12

*For plea: insert "G" for guilty plea, "NC" for nolo contendere, or "MI" for guilty but mentally ill. For dismissal: insert "D" for dismissed by court or "NP" for dismissed by prosecutor/plaintiff.

2. I was sentenced as stated below by Hon. George Butth

Name of judge

Count	SENTENCE DATE	MINIMUM			MAXIMUM		DATE SENTENCE BEGINS	JAIL CREDIT		OTHER INFORMATION
		Years	Mos.	Days	Years	Mos.		Mos.	Days	
Both	5-16-12	8			20				148	

3. Fill in the charts below with the information requested about the court proceedings in your case, and the names of the attorneys who represented you.

a. Trial Level - All Proceedings. From arrest to sentencing, including lineups and other proceedings.

NAME OF PROCEEDING	NAME OF ATTORNEY	NAME OF PROCEEDING	NAME OF ATTORNEY
Pre-Trial	Valerie Foster		
Trial	Valerie Foster		

b. Postconviction - All Proceedings. State and federal, including appeals, posttrial motions, and habeas petitions.

COURT	DOCKET NO.	NAME OF PROCEEDING	NAME OF ATTORNEY	RESULT	DATE OF RESULT
Court of Appeals	310897	Appeal Direct	Daniel Bremer	Affirmed	8-20-13
Supreme Court	147713	Leave to Appeal	Self	Not Persuaded	12-23-13
U.S. District Court of Michigan	Pending	Habeas corpus	Self	depends on Bath actions	

(Continued on the other side.)

4. Appointment of Counsel. Do you want an attorney appointed? ☒ Yes ☐ No If yes, complete and attach a financial schedule.

5. Grounds and Relief.

a. What action do you want the court to take? Re-examine my case, vacate in part, and new trial in part, do to inadequate conviction. And less than sufficient representation, or time commutation. Any of relief I may be entitled to.

b. What are the legal grounds for the relief you want? You must raise all the issues you know about. You may not be allowed to raise additional issues in the future. Use extra sheets of paper, if necessary.

ISSUE ONE: Inadmissible testimony from Pre-1em violation Fourteenth Amendment confrontation clause - Sixth Amendment violations
(Sixth Amend. violation)

Supporting facts: witness never showed for trial, my triers of fact never was allowed opportunity to gage witness/victim. Prosecutor purposely did not use due diligence

ISSUE TWO: Point variables wrongfully added violation of U.S.S.G

Supporting facts: There was no vulnerability to warrant scoring, there was no known fact of victims abilities as to P.V. 10, - No interference on P.V. 19 to 30^{from 55} should be reduce

ISSUE THREE: Ineffective Counsel 6th Amend violation

Supporting facts: Total indifference toward me because I would not plead out, failed to (never met with me other than 3, Pleas at court appearances (I asked for new counsel you refused me.)
→ notice Point variable mistakes, failed to subpoena my witness as I suggested, never discussed strategy

ISSUE FOUR: Prosecutor misconduct

Supporting facts: Prosecution willfully and purposefully used one witness testimony to enhance another witness live testimony to get conviction, knowing he had problem witness never used uniform act to secure (witness) as a result I was wrongly convicted.
(victim)

I declare that the statements above are true to the best of my information, knowledge, and belief.

1-30-14
Date

Kelvin Heath
Signature

PROOF OF SERVICE

I certify that on this date I served a copy of this motion upon the prosecutor by ☐ personal service. ☒ first-class mail.

1-30-14
Date

Kelvin Heath
Signature

Extra Page

Please take notice that included with Motion For Relief From Judgment, is 2, copies of paperwork I would like the Court to entertain while deciding above mentioned

① Is copy of letter recieved from trial attorney Valerie Foster after guilty verdict and sentencing, I never knew this nor is it part of court records...?

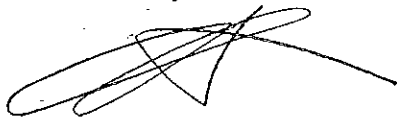
② Is copy of Prosecutor's brief Please read take notice of the 2, sentences with stars.

Newberry Corr. Fac.
13747 E. County Road 428
Newberry MI
49868

Kelvin Heath
1-28-14
Kelvin Heath #199603

If you may recall, the original plea offer was two counts of Larceny from a Person and a dismissal of all other counts and the Aggravated Stalking charge. Had you taken the deal, your guidelines would have could have scored as low as 14-29 months on the minimum, a sentence range with which the judge would have complied. Your conviction guidelines are now 50-200 on the minimum as a Supp 4 and a max of up to life. I know that you and your surrogates have already begun a campaign of shifting blame onto me. It is the predictable scenario of "when all else fails, blame the defense lawyer," as evidenced by the barrage of calls that Judge Buth's staff received from your mother and sister the day after your disastrous testimony, (I assume at your request since neither had been to court to witness what was really unfolding) but I am secure in the knowledge that my representation was dutiful and effective.

Sincerely,

A handwritten signature in black ink, appearing to read 'Valerie A. Foster', with a large, stylized flourish extending from the end of the signature.

Valerie A. Foster, Esq.
VAF/

COUNTER-STATEMENT OF QUESTIONS PRESENTED

- I. DEFENSE COUNSEL DID NOT OBJECT TO THE ADMISSION OF A WITNESS'S PRIOR TESTIMONY UNTIL AFTER THE PROSECUTION HAD RESTED ITS CASE. INSTEAD, COUNSEL PLAYED AN ACTIVE ROLE IN THE INTRODUCTION OF THE TESTIMONY AND STATED THAT SHE HAD NO OBJECTION TO EXHIBITS ADMITTED DURING THAT TESTIMONY. DO THESE ACTIONS CONSTITUTE WAIVER OF THIS ISSUE?

* The Trial Court was not presented with this question.*
Defendant-Appellant answers, "No."
Plaintiff-Appellee answers, "Yes."

- II. DEFENDANT USED AN ADVERTISEMENT TO LURE POTENTIAL VICTIMS TO AN APARTMENT COMPLEX FOR WHAT THEY BELIEVED WOULD BE A SENSUAL MASSAGE AND THEN, BY IMPERSONATING A POLICE OFFICER, USED THAT FALSE AUTHORITY TO ROB THEM. DURING THE INVESTIGATION, DEFENDANT PROVIDED FALSE INFORMATION TO THE POLICE. DID THIS PRE-OFFENSE CONDUCT AND USE OF AUTHORITY CONSTITUTE PREDATORY CONDUCT SUPPORTING THE SCORING OF OV 10 AT 15 POINTS, AND DID DEFENDANT'S FALSE INFORMATION TO POLICE SUPPORT A SCORING OF OV 19 AT 10 POINTS?

* The Trial Court was not presented with this question.*
Defendant-Appellant answers, "No."
Plaintiff-Appellee answers, "Yes."

- III. DEFENDANT'S TRIAL COUNSEL MOVED THE COURT FOR A REDUCTION OF BOND, OBJECTION TO THE CONSOLIDATION AT TRIAL OF THE TWO CASES, MOVED FOR A DIRECTED VERDICT, EXTENSIVELY CROSS-EXAMINED THE WITNESSES, AND MADE WHAT CLOSING ARGUMENT SHE COULD GIVEN THE EVIDENCE AGAINST DEFENDANT. HAS DEFENDANT FAILED TO DEMONSTRATE ANY INEFFECTIVE ASSISTANCE OF COUNSEL?

The Trial Court answered, "Yes."
Defendant-Appellant answers, "No."
Plaintiff-Appellee answers, "Yes."